



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/247,219	02/10/99	TOMASULA	P 862.004US1

IM52/1222  
JOSEPH A LIPOVSKY  
USDA ARS OTT NATIONAL CENTER FOR  
AGRICULTURAL UTILIZATION RESEARCH  
1815 NORTH UNIVERSITY STREET  
PEORIA IL 61604

EXAMINER

DUBOIS, P

ART UNIT	PAPER NUMBER
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1761  
DATE MAILED: 12/22/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Advisory Action**

Application No.

09/247,219

Applicant(s)

TOMASULA, PEGGY M.

Examiner

Art Unit

DuBois

1761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 December 2000 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 707.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).


1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search. (see NOTE below);
  - (b) ☐ they raise the issue of new matter. (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Attachment.

4. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
5. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attachment.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
- Claim(s) allowed: None.
- Claim(s) objected to: None
- Claim(s) rejected: 1-14.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.
9. ☐ The proposed drawing correction filed on \_\_\_\_\_ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
11. ☐ Other:

**Attachment to Advisory Action**

The proposed amendments will not be entered because they raise new issues that would require a new search and further consideration. The amendment raises the new issues that the holding step of the process is "at least 1 minute" and the depressurizing step is done to "maintain particle size of the protein precipitate" (Claim 15, lines 8 and 11 respectively). The request for reconsideration has been considered but is not found persuasive as Applicant's arguments are based on the new issues. However, it is noted that the applicant argues that Dahlstrom does not teach the addition of carbon dioxide. This is not considered persuasive because the rejection is based on Dahlstrom in view of Tomasula. As noted in the previous Office Action, Tomasula clearly teaches the pressurization of carbon dioxide. In further response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

  
**MILTON CANO**  
**PRIMARY EXAMINER**

*GAEL 1761*